

Montana Water Court
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MONTANA WATER COURT, UPPER MISSOURI DIVISION
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q

* * * * *

CLAIMANT: Samuel J. Kirby

CASE 41Q-0127-I-2023

41Q 30134344

41Q 30150421

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Samuel J. Kirby (Kirby) is the record owner of claims 41Q 30134344 and 41Q 30150421.

2. Claims 41Q 30134344 and 41Q 30150421 were decreed with the following DNRC issue remarks:

41Q 30134344:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.

THE VOLUME OF THIS WATER RIGHT APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS GREATER THAN 6.50 ACRE-FEET PER ACRE PER YEAR.

41Q 30150421:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.

THIS CLAIM DOES NOT APPEAR TO MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER SECTION 85-2-222 (1), MCA.

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM BELT CREEK.

3. The first-listed issue remarks on each claim are notice-type remarks and do not require further attention.

4. Kirby was ordered to meet with the DNRC to address the following issue remarks:

41Q 30134344:

THE VOLUME OF THIS WATER RIGHT APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS GREATER THAN 6.50 ACRE-FEET PER ACRE PER YEAR.

41Q 30150421:

THIS CLAIM DOES NOT APPEAR TO MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER SECTION 85-2-222 (1), MCA.

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM BELT CREEK.

5. On June 7, 2023, DNRC Water Resource Specialist Brandon Ahlgren (Ahlgren) filed a Memorandum. (Doc.*2.00).

6. Ahlgren reported that Kirby agreed the 6.50 acre-feet volume guideline is appropriate for domestic claim 41Q 3013433.

7. Ahlgren reported the following regarding claim 41Q 30150421:

During the June 5, 2023 phone call with Mr. Kirby he explained that he has a shallow well that he pumps water directly out of for his livestock. It was on the property before he purchased it. When examining the claimant map there is no attempt on the map to show a connection to Belt Creek. The parcel also does not border Belt Creek, it is separated from Belt Creek by railway tracks to the Northeast (Attachment #2). The claimant also claims "Groundwater" as the Source Type. When asked why Mr. Kirby marked "Stream" and "Belt Creek" he suggested that he had gotten advice from someone at the DNRC Lewistown office on how to fill out the HB110 form. During our May 19, 2023 phone call Mr. Kirby also said that he would be alright showing us the well if we would like. This would be an easy way to confirm whether this is just a small hand dug well or there is some pipeline connection to Belt Creek.

* "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

Further, Ahlgren indicated that if the following changes are made regarding claim 41Q 30150421, the issue remarks will be resolved:

Source Name: ~~BELT CREEK~~ **GROUNDWATER**
Source Type: GROUNDWATER
Diversion Means: ~~PUMP~~ **WELL**

8. An Order was issued setting a July 14, 2023 deadline for Claimant Samuel J. Kirby to file a statement agreeing or disagreeing with the following proposed changes

41Q 30134344:

Volume: **8.50** ~~7.50~~ AC-FT

41Q 30150421:

Source Name: ~~BELT CREEK~~ **GROUNDWATER**
Source Type: GROUNDWATER
Diversion Means: ~~PUMP~~ **WELL**

The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Claimant Samuel J. Kirby agrees with the recommended changes and a Master's Report would be issued. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by

the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The notice-type issue remarks decreed on both claims in this Case have served their purpose. No objections were filed, and no further proceedings are required.

RECOMMENDATIONS

1. Claims 41Q 30134344 and 41Q 30150421 should be modified as shown in Finding of Fact No. 8.

2. The issue remarks should be removed from claims 41Q 30134344 and 41Q 30150421.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Samuel J. Kirby
7196 US Highway 89
Belt, MT 59412-8324

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30134344 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SAMUEL J KIRBY
7196 US HIGHWAY 89
BELT, MT 59412 8324

Priority Date: DECEMBER 31, 1960

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 6.50 AC-FT

Households: 1

Maximum Acres: 2.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSE	36	19N	6E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.00		SENESEW	36	19N	6E	CASCADE

Total: 2.00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30150421 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SAMUEL J KIRBY
7196 US HIGHWAY 89
BELT, MT 59412 8324

Priority Date: DECEMBER 31, 1960

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 35.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENSW	36	19N	6E	CASCADE

Period of Diversion: MARCH 31 TO OCTOBER 31

Diversion Means: WELL

Period of Use: MARCH 31 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENSW	36	19N	6E	CASCADE